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IN THE

# Supreme Court of the United States

October Term, 1959

NO. 435

KINNEAR-WEED CORPORATION, *Petitioner*,

v.

HUMBLE OIL & REFINING COMPANY, *Respondent*

## BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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### Introduction

This is primarily a patent case, in which both of the Courts below held that Respondent had not infringed Petitioner's patent No. Re. 23,416, covering a type of combination drill bit.[1] The District Court also held the patent invalid, both for anticipation and want of invention.[2] The Court of Appeals did not pass on the question of validity, however, saying:

[1] U. S. District Court, Eastern District of Texas, Beaumont Division, Hon. Lamar Cecil, Judge.

[2] Judge Cecil's opinion is reported at 150 F.Supp. 113.

> "That finding (i.e., invalidity) is not essential to the disposition of the issues in this case." (259 F. 2d 398, 402.)

The Complaint also asserted, in addition to patent infringement, alleged unfair competition, violation of confidential relations and violation of the Federal and Texas antitrust laws on the part of Respondent. The District Court rendered judgment for Respondent and against Petitioner on all counts, including the "nonpatent" counts just mentioned, and entered separate findings of fact and conclusions of law (R. XVI, 4270-4320). In affirming the judgment of the District Court, the Court of Appeals, after expressing its agreement with the District Court on the issue of infringement, said:

> "Further we agree with the disposition by the district court of the claims other than for patent infringement." (259 F. 2d 398, 402.)

In denying Petitioner's first petition for rehearing, the Court of Appeals reaffirmed its holding that Respondent had not infringed Petitioner's patent. (266 F. 2d 352.)

Petitioner's second petition for rehearing was permitted to be filed but was simultaneously denied by the Court of Appeals, and this Petition for Certiorari followed.

## Argument

The trial consumed five weeks. The record contains over 4,000 pages of testimony and some 275 exhibits. Petitioner has obviously had his "day in court", and then some. Nevertheless, it is apparent that Petitioner now seeks to retry his entire case in the Supreme Court, ignor-

ing the well-settled principles that this Court does not grant certiorari to review evidence and that concurrent findings of fact made by the courts below will not be disturbed by this Court in the absence of a very obvious and exceptional showing of error. *General Talking Pictures Corp. v. Western Electric Co.*, 304 U.S. 175, 178; *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271, 275.

In *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 388, this Court stated that in an ordinary patent case a writ of certiorari should not be granted "except in cases involving principles the settlement of which is of importance to the public as distinguished from the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeals". Obviously, no such situation exists here.

Apparently recognizing that he cannot obtain a retrial in this Court simply by asserting that the courts below were wrong, Petitioner purports to find a conflict between the decisions below and that of Judge David A. Pine of the District Court of the District of Columbia in a so-called "4915 action" brought by Kinnear in 1950 against the Commissioner of Patents. In the latter proceeding, Judge Pine merely ruled that Kinnear was not estopped, because of prior Patent Office proceedings, to seek a patent on certain claims in his reissue application, and he ordered the Commissioner to issue Kinnear a patent on those claims (which subsequently became Claims 3 through 12 of Re. 23,416). This decision is reported as *Kinnear v. Marzall*, 95 F. Supp. 55 (1951). Judge Pine did not rule on the question of patentability, saying, "that question is not before me." (95 F. Supp. at p. 57).

And of course the 4915 action did not involve the question whether Respondent had infringed Petitioner's patent. Thus, Judge Pine's decision is in no way in conflict with the decision of either of the Courts below, and it affords no basis whatever for Petitioner to seek certiorari in this Court.

## Conclusion

The Courts below applied well-settled principles of law in disposing of Petitioner's claims. There is no conflict between their decisions and the decisions of any other court. Nor did either of the Courts below depart from the accepted and usual course of judicial proceedings. Accordingly, there is no reason whatever for review by this Court, and it is respectfully submitted that the Petition should be denied.

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